

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 108 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

VIRAL LEMINATERS LTD.

Appearance:

MR MANISH R BHATT for Petitioner
MR NR DIVETIA for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 04/05/98

ORAL JUDGEMENT (Per R.K.Abhichandani, J)

The Revenue has suggested the following two questions seeking a direction from the Income Tax Appellate Tribunal to forward the Statement of cases in respect of these questions under Section 256 (2) of the Income Tax Act, 1961.

1. "Whether, the Appellate Tribunal is right in law and on facts in directing the Assessing Officer to adopt the average rate of under invoicing three years at 16.67% as against 24% adopted by the Assessing Officer?"
2. "Whether, the Appellate Tribunal has correctly appreciated the facts on record and particularly the reasonings given by the Assessing Officer to the effect that the figures given by the assessee did not merit consideration and thereby arriving at a rate of 16.67% for the three years?".

2. The grievance voiced on behalf of the Revenue is that even though the Director of the Assessee Company had stated in answer to question no.35 in a statement that the level of under invoicing was between 18 to 20% on the basis of the seized diary which was taken into account by the Assessing Officer while making the block assessment, the Tribunal has, for no valid reason, taken a different view of the matter. In this regard, the Tribunal, after taking into account the said answer given by the Director of the Assessee Company, was of the opinion that it would be correct to compute the income for the block period on the basis of material found, statements made and the information gathered by the department during the course of search and seizure proceedings. It was noted that in the petition dated 8.12.1995 which was filed immediately after the search and seizures proceedings a disallowance of Rs.54 lacs was made [except saying that the ratio in those years must have been higher on the basis of the materials seized in the later years, no other concrete case had been made out by the department in the opinion of the Tribunal. The Tribunal therefore found that the average rate of 24% computed by the Assessing Officer could not be taken the basis for income for the prior period. It was also held that by applying this percentage, the Department would be working out notional income only, which cannot be supported in view of the decision of Hon'ble Supreme Court in State Bank of Travancore Vs. C.I.T.(Delhi) reported in 158 S.C. 102. The Tribunal held that the ratio will have to be computed by finding out the total sales, inclusive of those recorded in the books of accounts and other sales recorded in the seized materials. These two types of sales will give the total figure of sales and the total percentage of under invoicing will have to be worked out on that basis. The Tribunal came to a finding on the basis of the material on record that underinvoicing was low in 1990-91 and it had gradually increased in

subsequent period as mentioned in the diary. The Tribunal came to the conclusion that the ratio for the period prior to 1990 should be taken as more than 14.28% and since the figure shown by the assessee was 16.7% which was higher than the undisclosed income offered for 1986-87 to 1989-90 that should be accepted. We have referred to the findings of the Tribunal in detail to indicate that the findings of the Tribunal are based on the material on record and no question of law arisen in the matter.

3. The application is therefore rejected. Rule is discharged. No order as to costs.

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